
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-NY-279
)	
Emmanuel Frederic)	NAL/Acct. No. 200332380012
Brooklyn, NY)	
)	FRN: 0007-9945-02

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 23, 2003

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Emmanuel Frederic has apparently violated Section 301 of the Communications Act of 1934 ("Act"),¹ as amended, by operating an unlicensed radio transmitter on frequencies of 89.7 and 87.9 MHz. We conclude that Emmanuel Frederic is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On November 1, 2002, Commission agents investigated the operation of unlicensed FM broadcast stations in Brooklyn, NY. Using a mobile direction-finding vehicle, the agents observed unauthorized radio broadcast on 89.7 MHz, and positively identified the source of the unauthorized transmissions to 1024 Montgomery Street, Brooklyn, NY, 11213. There was no evidence of a Commission authorization for this operation in Brooklyn, NY.

3. On November 2, 2002, a Commission agent returned to 1024 Montgomery Street, Brooklyn, NY, and observed a vertical antenna on the roof of the building, from which a coaxial cable ran into Apartment 3K of the building. The agent then conducted a station inspection and determined that Emmanuel Frederic, who lives in Apartment 3K of the building, was the operator of the unlicensed station. Beginning in October 2000 to November 2001, Commission agents, on many occasions, had positively observed unauthorized radio broadcast of Emmanuel Frederic from 1024 Montgomery Street, Apartment 3K, Brooklyn, NY, and other locations in Brooklyn, NY.

4. On November 4, 2002, Emmanuel Frederic, in a telephone conversation with a

¹ 47 U.S.C. § 301.

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Commission agent, acknowledged the operation of an unlicensed radio station located at 1024 Montgomery Street, Apartment 3K, Brooklyn, NY.

5. On December 6, 2002, a Commission agent investigated the operation of unlicensed FM broadcast stations in Brooklyn, NY. Using a mobile direction finding vehicle, the agent observed unauthorized radio broadcast on 87.9 MHz, and positively identified the source of the unauthorized transmissions to 1024 Montgomery Street, Brooklyn, NY, 11213. There was no evidence of a Commission authorization for this operation in Brooklyn, NY.

III. DISCUSSION

6. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. A review of Commission's records showed that there was no evidence of a Commission authorization to operate this station on 89.7 or 87.9 MHz in Brooklyn, NY.

7. Based on the evidence before us, we find that, Emmanuel Frederic was responsible for the operation of radio transmitting equipment on 89.7 MHz on November 1, 2002, and on 87.9 MHz on December 6, 2002, in willful² and repeated³ violation of Section 301 of the Act.

8. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount for operation without an instrument of authorization at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁵ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

² Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

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9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules⁷, Emmanuel Frederic is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully violating Section 301 of the Act.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Emmanuel Frederic SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380012 and FRN: 0007-9945-02.

12. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380012.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and

⁶47 U.S.C. § 503(b).

⁷47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

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responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Emmanuel Frederic, 1024 Montgomery Street, Apartment 3K, Brooklyn, NY 11213.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A: Condensed List of Small Entities